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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,249	09/02/2003	Katsuyuki Yamamoto	Q76852	1865

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/652,249

Applicant(s)

YAMAMOTO ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☒ Claim(s) 13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In all relevant claims, the phrase "doughnut like a dumpling covered with sesame seed" is indefinite because it is not clear on what type of food applicant is claiming; is the food a doughnut or is it a dumpling? If it is a doughnut, the use of the term is not in accordance with the conventional meaning of doughnut. The specification states the food has sticky and resilient feelings upon eating similar to those observed for dumpling; if it is tasted like a dumpling, is it not more accurately to state that the product is a dumpling?

Claims 13-14 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot reference to two sets of claims to different features. See MPEP § 608.01(n). Accordingly, these claims not been further treated on the merits.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3,6-8, 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizoguchi et al .

Mizoguchi et al disclose a dough product. The product comprises 50-90 parts of wheat flour and 50-10 parts starches. Optional ingredients such as saccharides, skim milk, oil, fat, yeast, seasoning etc... can also be added. The dough is used to prepare products such as buns, rolls, sweet rolls and the like. The wheat flour can be replaced by other flour in amount of up to 50%, preferably from 10-30%. The starches include at least 4 parts of cold water swelling starch which is prepared by heating an aqueous slurry of starch at a temperature of at least about 27 degree C higher the swelling-starting temperature. Other starches include processed starch including cross-linked starch, etherified starch, esterified starch and the like. Suitable starting material includes potato starch, tapioca starch, sago starch, waxy corn starch etc... (see columns 2-4)

Mizoguchi et al do not disclose the amount of ungelatinized starch as claimed, the amount of saccharide, filling the dough and freezing the dough.

The preamble or intended use to make " doughnut like a dumpling" does not limit the claims; the claims are limited by its composition and Mizoguchi et al disclose similar composition. Thus, it is not an issue of how the product is called. Furthermore, it would have been obvious to one skilled in the art to make other dough product using the Mizoguchi et al composition because they disclose various types of baked product can

be made. As to the amount of ungelatinized starch, Mizoguchi et al disclose part of the wheat flour can be replaced with other flour. For example, if 50% wheat flour is used and 30% is replaced with other flours such as rice or corn; the amount of wheat flour is 20% and other flour is 30%. The other flour contains starch which contributes to the amount of ungelatinized starch. Thus, the final dough product has the amount of ungelatinized starch as claimed. It would have been obvious to vary the amount of saccharide depending on the type of product made and the degree of sweetness desired. It would have been obvious to freeze the dough for long-term storage; this is well known in the art. It would have been obvious to ferment the dough depending on the type of dough product made; this step would have been readily apparent to one skilled in the art. It would also have been obvious to fill the dough when desiring to obtain different taste and flavor.

Claims 5, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizoguchi et al in view of Geng et al.

Mizoguchi et al do not disclose the saccharide is a starch hydrolysate having a DE value of 8-26.

Geng et al disclose a dough product. They teach a variety of sweeteners including maltodextrin can be used in the dough. (see col. 5 lines 35-40)

Maltodextrin is a well-known sweetener and it is known to use it in a dough as shown by Geng et al. Thus, it would have been obvious to one skilled in the art to select maltodextrin as the saccharide ingredient in the Mizoguchi et al dough.

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Maltodextrin is a starch hydrolysate product. It would have been obvious to select any DE value depending on the degree of sweetness wanted.

Claims 4 and 9 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

There is no suggestion in the prior art to select starch acetate and/or hydroxypropyl starch. Also, when the amount of ungelatinized starch is contributed by the type of flour, this is furthermore removed from the limitation of using the type of starch as claimed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wada et al disclose a method for preparing frozen baker's dough.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wednesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 26, 2006

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700